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10 Attorneys for Defendant
11 SEZZLE INC.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **MICHAEL SLIWA**, individually,
and on behalf of all others similarly
15 situated,

16 Plaintiff,

17 v.

18 **SEZZLE INC.**,
19 Defendant.

Case No.

NOTICE OF REMOVAL

20 **TO THE COURT AND TO THE PLAINTIFF AND HIS ATTORNEYS**
21 **OF RECORD:**

22 **PLEASE TAKE NOTICE** that Defendant Sezzle Inc. (“Defendant”) removes
23 the California state court action, *Michael Sliwa v. Sezzle Inc.*, case number
24 22STCV24110, from the Superior Court of the State of California for the County of
25 Los Angeles to the United States District Court for the Central District of California
26 based on the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).

I. The Federal Court Action

1. On May 6, 2022, Plaintiff Michael Sliwa (“Plaintiff”) filed a putative class action in the United States District Court for the Central District of California, naming Sezzle Inc. as the only defendant. Exhibit A is a true and correct copy of the complaint (“Federal Court Complaint”).

2. The case was assigned to the Honorable Dale S. Fischer and assigned the case number 2:22-cv-03055-DSF-MAA.

3. On June 27, 2022, the parties met and conferred as required by Local Rule 7-3 regarding Defendant’s potential motion to compel arbitration.

4. After meeting and conferring with Plaintiff’s counsel, defense counsel filed a joint stipulation on July 1, 2022 setting the briefing schedule for a potential motion to compel arbitration. 2:22-cv-03055-DSF-MAA, ECF No. 11.

5. The court granted the stipulation. 2:22-cv-03055-DSF-MAA, ECF No. 13.

6. On July 14, 2022, in response to a request by Plaintiff’s counsel during the July 1 meet and confer, Defendant’s counsel sent Plaintiff’s counsel a letter identifying the language in the Sezzle User Agreement that requires Plaintiff to arbitrate his claims against Defendant. Defendant’s counsel also sent Plaintiff’s counsel screenshots of the Sezzle interface showing the steps that Plaintiff took when he agreed to the User Agreement.

7. Without any further communications from Plaintiff’s counsel, on July 21, 2022, Plaintiff unilaterally dismissed his claims against Defendant pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). *See* 2:22-cv-03055-DSF-MAA, ECF No. 14.

II. The State Court Action

8. On July 26, 2022, Plaintiff refiled his complaint against Defendant in the Superior Court for the State of California for the County of Los Angeles. Exhibit B is a true and correct copy of the complaint (“State Court Complaint”).

1 9. The State Court Complaint is substantially similar to the Federal Court
2 Complaint, except that the class Plaintiff seeks to represent is limited to “All
3 California persons who used the Sezzle Service and incurred an overdraft or NSF Fee
4 as a result of a Sezzle repayment deduction”, whereas the Federal Court Complaint
5 sought to represent a nationwide class. *Compare* Exhibit A ¶ 48 *with* Exhibit B ¶
6 49.

7 10. Additionally, the State Court Complaint does not reallege the claim
8 under the Minnesota’s Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.*, which
9 Plaintiff asserted in the Federal Court Complaint.

10 11. On August 25, 2022, Defendant filed an answer to the State Court
11 Complaint. Attached as Exhibit C is a true and correct copy of Defendant’s Answer
12 to Plaintiff’s State Court Complaint. Attached as Exhibit D is a true and correct copy
13 of all orders and other documents on the state court docket.

14 **III. Basis for Removal – CAFA Jurisdiction**

15 12. This case is properly removed under CAFA as this court has original
16 jurisdiction over this civil action in which the matter in controversy exceeds the sum
17 of \$5,000,000 and for which the Defendant is a citizen of a state that is different from
18 members of the putative class. 28 U.S.C. § 1332(d)(2).

19 **IV. Defendant Timely Removes the Complaint**

20 13. Plaintiff filed the State Court Complaint on July 26, 2022. Plaintiff also
21 filed a proof of service. According to the proof of service, Plaintiff served the
22 summons and complaint on August 2, 2022. Exhibit B, p. 21.

23 14. This Notice of Removal is timely under 28 U.S.C. § 1446(b) as it is filed
24 on August 26, 2022 which is within 30 days of receipt by the Defendant of the State
25 Court Complaint. 28 U.S.C. § 1446(b).

1 **V. Venue is Proper**

2 15. Venue is proper because the United States District Court for the Central
3 District of California embraces the county in which the state court action is now
4 pending. 28 U.S.C. § 1441(a).

5 **VI. The Requirements for CAFA Jurisdiction are Satisfied**

6 16. The amount in controversy exceeds the statutory minimum of
7 \$5,000,000. 28 U.S.C. § 1332(d).

8 17. Plaintiff's Prayer for Relief seeks an award of "restitution of all fees at
9 issue paid to Sezzle by Plaintiff and the Class as a result of the wrongs alleged herein
10 in an amount to be determined at trial." Exhibit B, p. 14.

11 18. The statute of limitations for Plaintiff's False Advertising Law claim is
12 3 years, *Cnty. of Fresno v. Lehman*, 229 Cal. App. 3d 340, 346 (1991); Cal. Civ. Proc.
13 Code § 338, and for Plaintiff's Unfair Competition claim is 4 years, Cal. Bus. & Prof.
14 Code § 17208.

15 19. The amount of revenue Defendant generated in late fees from California
16 customers from July 26, 2019 to July 26, 2022 is greater than \$5,000,000.

17 20. Plaintiff's Prayer for Relief also seeks "disgorgement of the ill-gotten
18 gains derived by Defendant from its misconduct." Exhibit B, p. 14.

19 21. The total amount of fee revenue Defendant generated from California
20 customers from July 26, 2019 to July 26, 2022 is greater than \$5,000,000.

21 22. These amounts, individually and together, satisfy CAFA's \$5,000,000
22 amount-in-controversy requirement. 28 U.S.C. § 1332(d).

23 23. Defendant is a citizen of the state of Delaware and the state of Minnesota
24 as it is incorporated in the state of Delaware and its principal place of business is in
25 Minneapolis, Minnesota. 28 U.S.C. § 1332(c).

26 24. Plaintiff alleges he is a citizen and resident of Long Beach, California.
27 Exhibit B ¶ 11.
28

1 25. This action is brought on behalf of a class of “California Persons.”
2 Exhibit B ¶ 49.

3 26. On information and belief, at least one member of the putative class is a
4 citizen of California.

5 27. Therefore, at least one member of the putative class, including the
6 named plaintiff, is a citizen of a state different from the Defendant. 28 U.S.C. §
7 1332(d)(2)(A).

8 28. Therefore, this Court has jurisdiction over this action pursuant to CAFA.

9 **VII. CONCLUSION**

10 29. Accordingly, Defendant respectfully requests that the action entitled
11 *Michael Sliwa v. Sezzle Inc.*, case number 22STCV24110, pending in the Superior
12 Court of the State of California, County of Los Angeles, be removed to this Court.

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14
15 Dated: August 26, 2022

TROUTMAN PEPPER
HAMILTON SANDERS LLP

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17
18 By: /s/ Jack F. Altura
Kalama M. Lui-Kwan
19 Jack F. Altura

20 Attorneys for Defendant
21 Sezzle Inc
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